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LB 90

SENATOR WITEK: I'd like to know why you changed in committee the language on the last page of the bill on lines 7...6, 7, and 8..."(i)n a civil action brought pursuant to this section, the plaintiff shall establish by a preponderance of the evidence that the defendant committed the act"? Originally it was "clear and convincing", and I was just wondering why that was changed.

SENATOR BRASHEAR: Preponderance of the evidence, Senator Witek, is the usual and customary standard in civil matters. That's the usual burden of proof.

SENATOR WITEK: Okay.

SENATOR BRASHEAR: And this is a civil action. Section 3 specifically deals with a civil action.

SENATOR WITEK: Okay. So if this dealt with a criminal action, would that still be "clear and convincing"?

SENATOR BRASHEAR: No. Criminal action would be beyond a reasonable doubt.

SENATOR WITEK: Beyond a reasonable doubt. So you've lowered it. If it's...I guess my concern is that businesses will be inundated with lawsuits if we keep it to the lower level of proof and that's why I was comfortable with "clear and convincing", and I guess the committee must have felt that it would be okay to put in "preponderance", then, correct?

SENATOR BRASHEAR: Yes, and I think "preponderance" is a well-established, sufficiently rigid standard to protect litigants. Preponderance...

SENATOR WITEK: Okay. And one other question. We were trying to find out anywhere else in statute if it refers to sexual orientation and could not find any references to that. Did the committee find any other references to sexual orientation anywhere else in statute or that you would personally know of? Is this the first time that's been mentioned in legislation?

SENATOR BRASHEAR: It may well be the first time. I am not